

work will be used to determine substantial portion of income under paragraph (1) of this definition.

(3) The tenant who qualifies as a domestic farm laborer in order to reside or continue to reside in any project with a nonrestrictive farm labor clause in the mortgage covenants (see § 1944.176(d) (5) of this subpart) must not have adjusted annual income which exceeds the moderate income limit as shown in exhibit C of subpart A of part 1944 of this chapter (which is available in any FmHA or its successor agency under Public Law 103-354 office), for the appropriate household size and appropriate geographical area. Tenants residing in housing which was initially rent free without the non-restrictive labor clause in the mortgage covenants (i.e. on-farm site projects where the tenant must work for the farm owner) need not certify income (see paragraph (1)(ii) of this definition), and need not be low or moderate income tenants in order to be eligible to occupy a unit.

(i) Income for purposes of this subpart is defined under the terms annual income (describing inclusive and exempted income), adjusted annual income, and adjusted monthly income in paragraph II of exhibit B of subpart C of part 1930 of this chapter.

(ii) For servicing purposes, an exception to the moderate income rule is permitted in accordance with paragraph VI of exhibit B of subpart C of part 1930 of this chapter.

Technical assistance. The provision of services by an entity with farm labor housing and real estate development capacity to an applicant entity who lacks such a capacity. Such assistance may include, but is not limited to:

(1) Performing outreach efforts to inform and recruit potential LH applicants.

(2) Conducting site searches, negotiating and executing property acquisitions, and resolving planning and zoning issues.

(3) Preparing market analyses, feasibility analyses, and financial proformas.

(4) Packaging LH loan and grant applications, as well as applications from other funding sources.

(5) Estimating construction costs and providing oversight during construction periods.

Variety of interests. To meet the representation of a variety of interests in a broad-based nonprofit organization, members should be actively affiliated with or participating in civic, business, agricultural, or service organizations in their community; members' previous and current occupations may be considered in this determination. Individual members may represent multiple interests as well.

[56 FR 28472, June 21, 1991, as amended at 57 FR 59903, Dec. 17, 1992; 58 FR 40951, July 30, 1993; 64 FR 24480, May 6, 1999; 67 FR 66310, Oct. 31, 2002; 67 FR 78328, Dec. 24, 2002]

§ 1944.154 Priorities for tenants' occupancy.

(a) Tenant occupancy in labor housing is prioritized in the following order:

(1) First priority is to be given to eligible farm laborer households based upon percent of total earnings from farm labor in the following ranked categories: 71 to 100 percent; 51 to 70 percent; 26 to 50 percent; and less than 25 percent.

(i) For LH units without Rental Assistance, occupancy priority within each ranking category is according to the household's income, very-low, low, then moderate.

(ii) For LH units with Rental Assistance, tenant occupancy priority is given to all eligible very-low income farm worker households by ranked category, then to low income farm worker households by ranked category. Moderate income may be served when there are no very-low or low-income eligible farm workers on the waiting lists, again by ranked category.

(2) Second priority is given to retired or disabled farm laborer households who were in the local farm market area at the time of retirement or becoming disabled. Occupancy priority will be by paragraph (a)(1) (i) or (ii) of this section without the farm income ranking category.

(3) Third priority is to be given to other retired or disabled farm laborer households. Occupancy priority will be by paragraph (a)(1) (i) or (ii) of this section without the farm income ranking category.

(b) When there is a diminished need for housing by persons or families in the above categories, such units may be made available to persons or families eligible for occupancy under the section 515, Rural Rental Housing program. Section 515 tenants may occupy the labor housing until such time the units are again needed by persons or families eligible under paragraph (a) of this section. As the basis for FmHA or its successor agency under Public Law 103-354's approval or disapproval of a borrower's determination of diminished need, the borrower must submit to FmHA or its successor agency under Public Law 103-354 a current analysis of need and demand, identical to the market survey required of applicants in exhibit A-I of this subpart. The borrower's determination and the State Director's recommendation should be forwarded to the National Office for concurrence.

(c) For additional guidance on occupancy and rental assistance, refer to FmHA Instruction 1930-C, exhibit B VI of this subpart, Renting Procedures, and exhibit E of this subpart, Rental Assistance Program. The Agency is required by statute to provide affordable housing to eligible farm workers and their families as a first program priority and to provide Rental Assistance as a second program priority. If it appears there is conflict in FmHA Instructions concerning the housing of an eligible Domestic or Migrant Farm Worker, document the problem and consult the District Director. If necessary, the problem may be referred to the State Office and/or the National Office for resolution.

(d) *Tenant Occupancy records.* (1) For tenants of housing owned by farm borrowers, rent is not charged and employment related occupancy restrictions do apply (reference §1944.164(h) for additional guidance). The borrower shall have each tenant execute a verification of occupancy and farm labor on exhibit K-1, Verification of Domestic Farm Labor and Occupancy in Rent Free Housing, on initial occupancy of the dwelling unit. The borrower shall retain the properly completed forms and make them available for FmHA or its successor agency under Public Law 103-354 Inspection

only for the current tenant(s) and to supplement the annual reporting requirements required in the loan agreement. If the housing is not occupied on a year-round basis, then the report should list the names of the migrants or seasonal farmworkers attached to exhibit K-1.

(2) For tenants of housing when rent is charged and employment restrictions do not apply (reference §1944.164(h) for additional guidance). The borrower shall be guided by the procedures referenced in paragraph (c) of this section.

(e) *Ineligible occupants.* (1) For housing owned by farm borrowers. Ineligible occupants are immediate relatives of the borrower(s) and anyone who is not employed in domestic farm labor, as defined in §1944.153 of this subpart. Normally, occupancy of labor housing owned by farm borrowers is restricted to employees of the farmer or is governed by an employment contract with the farmer. Occupancy of housing owned by farm borrowers, regardless of the site (on-farm or in town), may be occupied by ineligibles with the permission of the State Director.

(2) *For housing owned by organizations.* Ineligible occupants are defined in exhibit B of subpart C of part 1930 of this chapter.

[56 FR 28473, June 21, 1991, as amended at 57 FR 59904, Dec. 17, 1992]

§ 1944.155 Responsibility for LH processing and servicing.

All LH loan and/or LH grant application processing and servicing is the responsibility of the FmHA or its successor agency under Public Law 103-354 District Director with redelegation authority for on-farm labor housing loans.

[57 FR 59904, Dec. 17, 1992]

§ 1944.156 General loan/grant processing requirements.

(a) *Timeliness.* All applicants will be informed of a decision regarding their request for assistance within a reasonable timeframe established by RHS. If RHS cannot provide an eligibility determination within a reasonable timeframe, the applicant will be notified when the determination will be made.